

House File 2226 - Introduced

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A BILL FOR

1 An Act relating to grandparent and great-grandparent

2 visitation.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 600.11, subsection 2, paragraph e,
2 unnumbered paragraph 1, Code 2009, is amended to read as
3 follows:

4 A person who has been granted or who has previously
5 petitioned for visitation rights with the child to be adopted
6 pursuant to section 600C.1.

7 Sec. 2. Section 600A.5, subsection 3, paragraph b, Code
8 2009, is amended by adding the following new subparagraph:

9 NEW SUBPARAGRAPH. (7) Living grandparents or
10 great-grandparents of the child under the following
11 circumstances:

12 (a) The parents of the child are married.

13 (b) The parents of the child are unmarried and
14 the grandparent or great-grandparent is the parent or
15 great-grandparent of the mother, or the grandparent or
16 great-grandparent is the parent or great-grandparent of the
17 father and the father's paternity of the child has been legally
18 established.

19 Sec. 3. Section 600C.1, Code 2009, is amended by striking
20 the section and inserting in lieu thereof the following:

21 **600C.1 Grandparent and great-grandparent visitation.**

22 1. The grandparent or great-grandparent of a minor child
23 may petition the court for grandchild or great-grandchild
24 visitation under any of the following circumstances:

25 a. During the pendency of or after a decree or final order
26 is issued in a dissolution, legal separation, child support,
27 or annulment proceeding of the parent of the child if the
28 proceeding involves the child. The remarriage of a parent does
29 not affect the authority of a court to grant visitation to any
30 grandparent or great-grandparent under this section.

31 b. If either parent of the child is deceased,
32 notwithstanding the remarriage of the surviving parent of
33 the child or the adoption of the child by the spouse of the
34 surviving parent of the child.

35 c. If the parents of the child are unmarried and the

1 grandparent or great-grandparent is the parent or grandparent
2 of the mother, or if the grandparent or great-grandparent
3 is the parent or grandparent of the father and the father's
4 paternity of the child has been legally established.

5 *d.* During the pendency of a termination of parental rights
6 proceeding involving the child and prior to the issuance of an
7 order granting the petition for termination of parental rights.

8 *e.* During the pendency of an adoption proceeding involving
9 the child and prior to the issuance of a final adoption decree.

10 2. The court may grant visitation to the grandparent or
11 great-grandparent if the court finds that the grandparent or
12 great-grandparent has an interest in the welfare of the child
13 and that granting of visitation is in the best interest of
14 the child based upon all of the following considerations as
15 applicable to the circumstances specified in subsection 1:

16 *a.* The prior interaction and interrelationship of the child
17 with the child's parents, siblings, and other persons related
18 by consanguinity or affinity, and with the grandparent or
19 great-grandparent.

20 *b.* The geographical location of the residence of each
21 parent or prospective adoption petitioner and the distance
22 between those residences, and the geographical location of the
23 grandparent's or great-grandparent's residence and the distance
24 between the grandparent's or great-grandparent's residence and
25 the child's residence.

26 *c.* The child's and parents' or prospective adoption
27 petitioner's available time, including but not limited to
28 each parent's or prospective adoption petitioner's employment
29 schedule, the child's school schedule, and the child's and
30 the parents' or prospective adoption petitioner's holiday and
31 vacation schedule.

32 *d.* The age of the child.

33 *e.* The child's adjustment to home, school, and community.

34 *f.* If the court has interviewed the child regarding the
35 wishes and concerns of the child as to visitation by the

1 grandparent or great-grandparent, the wishes and concerns of
2 the child, as expressed to the court.

3 *g.* The health and safety of the child.

4 *h.* The amount of time that will be available for the child
5 to spend with siblings.

6 *i.* The mental and physical health of all parties.

7 *j.* Each parent's or prospective adoption petitioner's
8 willingness to miss or reschedule parenting time or
9 visitation to provide visitation with the grandparent or
10 great-grandparent.

11 *k.* Whether the grandparent or great-grandparent previously
12 has been convicted of or pleaded guilty to any criminal
13 offense involving any act that resulted in a child being an
14 abused child or a neglected child; whether the grandparent
15 or great-grandparent, in a case in which a child has been
16 adjudicated an abused child or a neglected child, previously
17 has been determined to be the perpetrator of the abusive
18 or neglectful act that is the basis of the adjudication;
19 whether either parent or a prospective adoption petitioner
20 previously has been convicted of or pleaded guilty to a crime
21 involving domestic abuse involving a victim who at the time
22 of the commission of the offense was a member of the family
23 or household that is the subject of the current proceeding;
24 whether either parent or a prospective adoption petitioner
25 previously has been convicted of an offense involving a victim
26 who at the time of the commission of the offense was a member
27 of the family or household that is the subject of the current
28 proceeding and caused physical harm to the victim in the
29 commission of the offense; and whether there is reason to
30 believe that the grandparent or great-grandparent has acted
31 in a manner resulting in a child being an abused child or a
32 neglected child.

33 *l.* Whether the custodial parent or a parent subject to a
34 shared parenting decree or order has continuously and willfully
35 denied the other parent's right to parenting time in accordance

1 with an order of the court.

2 *m.* Whether either parent or the adoption petitioner has
3 established a residence or is planning to establish a residence
4 outside the state.

5 *n.* The wishes and concerns of the child's parents or the
6 adoption petitioner, as expressed by them to the court.

7 *o.* Any other factor in the best interest of the child.

8 3. For the purposes of this section, "*court*" means the
9 district court or the juvenile court if that court currently
10 has jurisdiction over the child in a pending action. If an
11 action is not pending, the district court has jurisdiction.

12 4. Notwithstanding any provision of this chapter to the
13 contrary, venue for any action to establish, enforce, or modify
14 visitation under this section shall be in the county where
15 either parent resides if no final custody order determination
16 relating to the grandchild or great-grandchild has been entered
17 by any other court. If a final custody order has been entered
18 by any other court, venue shall be located exclusively in the
19 county where the most recent final custody order was entered.
20 If any other custodial proceeding is pending when an action to
21 establish, enforce, or modify visitation under this section is
22 filed, venue shall be located exclusively in the county where
23 the pending custodial proceeding was filed. If the action is
24 brought during the pendency of a termination of parental rights
25 proceeding, venue shall be as provided in section 600A.5.
26 If the action is brought during the pendency of an adoption
27 proceeding, venue shall be as provided in section 600.3.

28 5. Notice of any proceeding to establish, enforce, or modify
29 visitation under this section shall be personally served upon
30 all parents of a child or a prospective adoption petitioner
31 whose interests are affected by a proceeding brought pursuant
32 to this section and all grandparents or great-grandparents
33 who have previously obtained a final order or commenced a
34 proceeding under this section.

35 6. The court shall not enter any temporary order to

1 establish, enforce, or modify visitation under this section.

2 7. An action brought under this section is subject to
3 chapter 598B, and in an action brought to establish, enforce,
4 or modify visitation under this section, each party shall
5 submit in its first pleading or in an attached affidavit all
6 information required by section 598B.209.

7 8. In any action brought to establish, enforce, or modify
8 visitation under this section, the court may award attorney
9 fees to the prevailing party in an amount deemed reasonable by
10 the court.

11 9. If a proceeding to establish or enforce visitation
12 under this section is commenced when a dissolution of marriage
13 proceeding is pending concerning the parents of the affected
14 minor child, the record and evidence of the dissolution
15 action shall remain impounded pursuant to section 598.26.
16 The impounded information shall not be released or otherwise
17 made available to any person who is not the petitioner or
18 respondent or an attorney of record in the dissolution of
19 marriage proceeding. Access to the impounded information by
20 the attorney of record for the grandparent or great-grandparent
21 shall be limited to only that information relevant to the
22 grandparent's or great-grandparent's request for visitation.

23 EXPLANATION

24 This bill amends the grandparent visitation law (Code
25 chapter 600C). Current law allows a grandparent or
26 great-grandparent to petition for visitation of a minor
27 child. The court must consider a fit parent's objections to
28 granting visitation, and a rebuttable presumption arises that
29 a fit parent's decision to deny visitation to a grandparent
30 or great-grandparent is in the best interest of a minor
31 child. The court may grant visitation to the grandparent or
32 great-grandparent if the court finds all of the following
33 by clear and convincing evidence: the grandparent or
34 great-grandparent has established a substantial relationship
35 with the child prior to the filing of the petition; the parent

1 who is being asked to temporarily relinquish care, custody, and
2 control of the child to provide visitation is unfit to make the
3 decision regarding visitation; and it is in the best interest
4 of the child to grant such visitation.

5 The bill strikes the current provisions and instead provides
6 that the grandparent or great-grandparent of a minor child
7 may petition the court for visitation of a minor child only
8 under specified circumstances: during the pendency of or
9 after a decree or final order is issued in a dissolution,
10 legal separation, child support, or annulment proceeding of
11 the parent of a child if the proceeding involves the child;
12 if either parent of the child is deceased; if the parents of
13 the child are unmarried and, in the case of the grandparent
14 or great-grandparent who is the parent or grandparent of the
15 father, the father's paternity of the child has been legally
16 established; during the pendency of a termination of parental
17 rights proceeding; or during the pendency of an adoption
18 proceeding.

19 The bill provides that the court may grant visitation
20 to the grandparent or great-grandparent if the court finds
21 that the grandparent or great-grandparent has an interest
22 in the welfare of the child and that granting of visitation
23 is in the best interest of the child. The court is to make
24 this determination based upon a listing of considerations
25 including, as applicable to the circumstances: the prior
26 interaction and interrelationship of the child with the child's
27 parents, siblings, and other persons related by consanguinity
28 or affinity, and with the grandparent or great-grandparent;
29 the geographical location of the residences of each of the
30 parties and the distance between the residences; the child's
31 and parents' or prospective adoptive parent's available time;
32 the age of the child; the child's adjustment to home, school,
33 and community; if the court has interviewed the child, the
34 wishes and concerns of the child; the health and safety of
35 the child; the amount of time that will be available for

1 the child to spend with siblings; the mental and physical
2 health of all parties; each parent's or prospective adoptive
3 parent's willingness to miss or reschedule parenting time
4 or visitation to provide visitation with the grandparent or
5 great-grandparent; any of the party's previous convictions
6 of certain crimes or involvement in the abuse or neglect of
7 a child; whether the custodial parent or a parent subject
8 to a shared parenting decree or order has continuously and
9 willfully denied the other parent's right to parenting time in
10 accordance with an order of the court; whether either parent or
11 a prospective adoptive parent has established a residence or is
12 planning to establish a residence outside the state; the wishes
13 and concerns of the child's parents or prospective adoptive
14 parent, as expressed by them to the court; and any other factor
15 in the best interest of the child.

16 The bill also provides procedural and jurisdictional
17 provisions that exist under the current law.